

NOVEMBER / DECEMBER 2012

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COMMUNICATIONS AND TECHNOLOGY + EDUCATION

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States Will Play a Big Role in Health IT

BY MERRILL MATTHEWS

President Barack Obama promised that his health care reform legislation would increase access to health care, lower costs and improve quality. It will achieve none of those goals; indeed, it will likely exacerbate our current challenges with access, cost and quality.

However, that does not mean that health care reform is dead. Reform is happening at a rapid pace, and it's doing so in spite of the *Patient Protection and Affordable Care Act (ACA)* rather than because of it. In fact, Washington is largely oblivious to the changes that are fundamentally reshaping how health care is practiced in the U.S., and increasingly around the world. We're talking about health IT.

Health IT is an umbrella term that generally refers to a number of more specific technology-related health care functions: the effort to expand electronic health records (EHR); e-prescribing; the growing adoption and adaption of mobile devices such as cell phones and tablets for medical purposes, referred to as mobile health, or m-health; and the use of the Internet to see medical providers, known as tele-health.

Congress has gotten involved recently by passing legislation that gives the U.S. Food and Drug Administration (FDA) some oversight to regulate certain software and apps that function as a medical device. And the ACA hands out billions of dollars to encourage hospitals and other health care providers to embrace EHRs. But for the most part health IT is not on Washington's radar.

But health IT should be on state legislators' radar, because there are so many areas associated with it where states are the primary regulators: pharmacies, hospitals and clinics, physicians and nurses, insurance, communications networks, Medicaid, the State Children's Health Insurance Program, nursing homes and assisted living centers. And while states may not have primary oversight on privacy issues, they may end up playing a role.

Take, for example, tele-health. This could be one of the most important changes in health care because it eliminates the distance factor. The ability of patients, especially those in rural areas, to see their physician or a specialist creates huge new efficiencies. A tele-health visit, ideally with both the doctor and patient sitting in front of a screen, does not and should not do away with the face-to-face visit. But it might work very well for a quick follow-up visit, and it is already demonstrating both efficacy and savings for mental health care.

The problem is that a patient's health care provider(s) could live in a different state, which creates a practice-licensing problem. It is fine if the patient wants to travel out of state to see a physician; but seeing a physician across state lines will run afoul of most state medical licensing laws. It's an issue that will have to be addressed if tele-health is ever going to reach its full potential.

Next consider Medicaid. The federal-state health insurance program for the poor has already become the largest budget item for many states and will be soon for many more—and that's before an estimated 16 million more Americans become eligible for Medicaid under the ACA.

However, as Dr. Anand Iyer of WellDoc, Inc., a company that specializes in helping patients use mobile technology to manage chronic care conditions, nearly everyone has a cell phone, regardless of income. WellDoc has demonstrated significant benefits in helping diabetics manage their condition, thereby keeping them out of the hospital, which keeps costs down. There are similar programs to help pregnant mothers manage their pregnancy and to help smokers quit. Could some similar type of system be applied to Medicaid patients with chronic conditions or the need to improve their health habits?

New apps also help pharmacists monitor a patient's medications, which can help medical professionals detect whether a patient has a medication that could interact negatively with his other medications.

And the day may come when Medicaid patients—indeed all patients—cover their co-pays by using their phone as a mobile wallet or as a place for keeping their basic medical history, a personally kept electronic medical record.

Then there is health insurance, which is largely regulated by the states—or at least it was until the ACA passed. There are new companies creating apps that interact with a person's health insurance, showing how much of the deductible has been met, what the co-pay should be, etc. One company is working on an app that would identify doctors in patient's vicinity and how much they would charge for a particular type of procedure, given the patient's health coverage.

And let's not forget taxes. The states have the ability to tax many of these providers and services. Will they see health IT as a burgeoning cash cow that could help fill state coffers? Or will they shy away from taxing medical care and information, as they have in the past?

Health care is entering the telecommunications age, and that development has significant ramifications for the access, cost and quality of health care. States have not been involved yet, but they soon will be. State legislators need to familiarize themselves with these issues, while asking how they can apply ALEC's principles of free markets and limited government. Health care reform can increase access, lower costs and improve quality of health care—but it will require technology, not the *Affordable Care Act*, to do it.



MERRILL MATTHEWS is a resident scholar with the Institute for Policy Innovation and the Policy Level Private Sector Chair of ALEC's International Relations Task Force/Federalism Working Group. Bartlett Cleland is policy counsel for IPI and the private sector co-chair of ALEC's Communications and Technology Task Force.

Voice over Internet Protocol — Let Freedom Ring



BY JOEL ANDERSON

There's no two ways about it. Sacramento has fostered the creation of an army of state regulators, an army that's grown so powerful it no longer requires, or even requests permission before it launches ever more efforts to regulate how we do business, what we buy, how we live our lives. Left to its own devices, California government's regulator army has taken on a Frankenstein-like life of its own, seeking new targets to control and manipulate unless it's directed, unequivocally, to stop.

And that's exactly what happened last summer in the case of SB1161 (D-Padilla), a bill that limits state regulators from regulating Voice over Internet Protocol (VoIP), one of the fastest growing arenas of Internet-based information sharing systems. Just for a change, our legislature decided it was okay to leave well enough alone.

We've come a long way from the days when telephone calls were made by literally connecting two callers through the telephone company's vast array of lines and switches. Nowadays, phone companies digitalize everything, even simple phone calls, breaking them down into packets of digital code that are transmitted, then decoded into recognizable speech, at the receiving end. In simple terms, VoIP utilizes the processing power in our home computers, smartphones, tablets and other devices, turning each of them into its own little phone company. We're just starting to see the potential for new apps and services this can provide.

Unfortunately, just as quickly as technical entrepreneurs are coming up with new ways to utilize this wonderful new de-centralized communications platform, government regulators have been busy trying to figure out how existing regulations that currently apply to utilities and centralized phone systems can be extended into regulating VoIP.

The problem stems from government's never-ending quest to find excuses for inserting itself into every aspect of our lives. For example, as simple telephone service became more and more critical to living a fully engaged life, government regulators created rules and added extra fees to our basic phone service, treating it much the same way as electricity and natural gas utilities. Government regulators, always on the lookout for any excuse to extend their reach, took it upon themselves to decide that because

computer network driven VoIP sort of, kind of, looks and acts like plain old telephone service, it must be therefore be similarly regulated.

The good news is that California traditionally has a history of supporting Internet-based industries, with good reason. The demand for faster broadband networks and new applications for internet-based devices such as tablets and smart phones are now the leading edge in new technology products and services coming to market. Designing, constructing and operating the systems that drive these products and services have brought untold wealth and employment opportunities to the Golden State, and it's one of our few economic bright spots. That's why SB1161, which literally spells out how emerging VoIP technologies will be protected from over-zealous regulators, received strong bipartisan support.

Backing up SB1161 is the Federal Communications Commission (FCC), which has also drawn a bright regulatory line between traditional telephone service and computer based information services, such as VoIP. In essence, SB1161 guarantees that California regulators will be forced to respect this federally-mandated distinction. For example, the FCC has made it clear that customers of computer-based information systems cannot be regulated as a utility, even while basic safeguards, such as mandating 9-1-1 service, services to the disabled, telephone number portability, and consumer safeguards, can be required for VoIP systems.

For those of you who might think such clarity of regulatory guidelines isn't really necessary, I would point out that implementing SB1161 is estimated to cost the state more than \$150,000, with most of that money expected to be spent by the California Public Utilities Commission (CPUC) while it determines exactly how much this new law will restrict its regulation of VoIP. You read that right: the state of California had to pass a law and will be spending tens of thousands of dollars just for the purpose of stopping one of its own regulating agencies from exceeding its regulatory authority.

It's a disturbing irony that California has become so regulation happy that we must now pass laws to regulate our own regulators. Perhaps, at some point, there will be bi-partisan support for a legislative effort to simply reduce and remove California's job killing regulation en masse, instead of our current expensive and time consuming approach of applying a new layer of regulations to cover up the flaws of the old. But until then, SB1161 will help assure the job-creating wealth and opportunities of VoIP. This law gives me hope that California can turn around and start supporting job-creating industries.



SEN. JOEL ANDERSON is a member of the California State Senate for the 36th District, representing San Diego and Riverside Counties.

In Technology Policy, Doing Less Means Getting More

BY REP. BLAIR THORESON AND BARTLETT CLELAND

The coming of a new year is the perfect time to look back at on the last two years of our chairing ALEC's Communications and Technology Task Force, and think about plans for next year.

We have learned a lot, and had many previous lessons reinforced, since we were handed the gavel of our Task Force. Perhaps one of the lessons most often reinforced is that when it comes to communications and technology policy, doing less often means getting more.

When we became Task Force chairs, we had a simple but ambitious goal: to be the premier forum for communications and technology policymaking in the states. To that end, we put on the agenda for the Task Force the same major issues that have been the hottest topics for debate in the states and our nation: online sales taxes, broadband stimulus grants, cybersecurity, biometrics, government-owned broadband, innovation policy, privacy codes of conduct, information technology, communications taxes, intellectual property, disaster response, rural connectivity, Internet regulation, and more.

From all of the presentations and discussions on these topics from legislators and experts, what has been repeatedly reinforced is the truth that technology continues to advance rapidly, much faster than our laws and regulations.

According to a principle known as Moore's Law, the power of a computer doubles approximately every two years, or conversely the price of the same computer drops in half. This means that electronic devices such as cell phones, computers, and music players continue to get smaller, faster, and cheaper. It also means that new products and services are constantly being developed, which fuels innovation, job creation, and economic growth.

Appropriately, policymaking tends to be much slower. Our Constitution has given rise to a federal system with several checks-and-balances and separate powers among the three branches of our federal government. State governments have largely followed the same path. Our system of government is designed to ensure that laws and regulations are carefully considered before they are enacted. Our system of limited, deliberate government helps to protect the fundamental freedoms of Americans and to enable the private sector to thrive.

When it comes to communications and technology, there is clearly a tension between the speed with which technology changes and slowness to changes in policy. The laws on the books do not and cannot account for the dramatic and unpredictable changes

typically wrought by technology. For example, our telephone service laws were written for rotary phones and do not reflect the current economics of broadband. Similarly, our consumer protection laws cannot anticipate the hopes and concerns of consumers from the ubiquity of mobile devices. What are policymakers to think? That more good can come from doing little, that less is often more.

Unless it is abundantly clear that there is a market failure and consumers face an actual harm, government should stay out of the way of technology. In many cases, the market will respond to consumers' behavior by adjusting to their demands, resulting in a far better outcome. If we must legislate and regulate, we must use a light touch and think carefully about the impact of our policies. Additionally, we must also recognize that technology will change and anticipate that the policies can be rendered obsolete.

We have strived to put this lesson into practice. As Task Force chairs, we have encouraged our new subcommittees to work hard towards achieving a better understand of the interplay between technological change and policy. We have also encouraged members to develop policies that reflect the idea and tried to lead by example. For example, when we set out to write a Task Force policy for online privacy, we decided to simply revise a broad statement of principles rather than draft a model bill so that the policy would better reflect the state of technology. We feel so strongly that this is the correct approach that we have submitted the principles to the U.S. National Telecommunications and Information Administration as it works to develop a new national code of conduct for online privacy.

The stakes for getting the right policy affecting communications and technology now and in the months ahead could not be any greater. In the midst of one of the worst economic downturns in history, the Internet economy is one of the few areas where investment in research, infrastructure, and facilities, and consumer spending on products and services, continues at a strong pace. We cannot afford to let slipshod policymaking slow growth in this sector.

We spent 2012 striving to craft policies that would generate more from less. And now we look forward to getting more in 2013 and beyond.



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Point: Current Retransmission Consent Regime is Not a Free Market

BY RANDOLPH J. MAY

In recent years, rising fees have been the source of increasing friction between broadcasters and multichannel video programming distributors (MVPDs) negotiating over rights to allow the MVPDs to retransmit broadcast signals. Not surprisingly, in light of some recent actual blackouts and threatened blackouts of network television programming by broadcasters in connection with these retransmission consent fee negotiations, there is now a debate concerning whether the FCC should adopt a new set of dispute resolution rules.

There is a fundamental issue, however, that should be addressed before considering whether, or what kind, of new rules should be adopted governing the retransmission consent negotiations: Whether, as the broadcasters often claim, the government ought to take a “hands off” policy towards the negotiations because they take place in a “free market” context, or whether, instead, the bargaining presently takes place in the context of a rather “un-free” market.

The fact is the negotiations occur in the context of a federal regulatory overlay that mixes elements of private bargaining with forced-access and protectionist elements. This creates artificial constraints that make the negotiations anything but a true free market situation. Indeed, existing regulatory constraints have the effect of conferring certain advantages that may work to the negotiating advantage of broadcasters and against the MVPD cable and satellite companies.

In the *Cable Act of 1992*, Congress mandated that broadcasters may compel cable operators to carry their broadcast content on a basic tier channel. The broadcaster simply has to declare its content “must-carry” to invoke its statutory program carriage rights against cable providers. And Congress mandated that the “must-carry” broadcaster, which has been granted its spectrum free of charge, gets to pick which particular cable channel must carry its content. Since passage of the *Satellite Home Viewing Improvement Act of 1999*, satellite television providers must comply with many of the same must-carry-type mandates as cable operators.

Broadcasters can elect to forego the “must-carry” option and instead negotiate directly with video distributors for retransmission of their broadcast signal. But cable providers are again restricted from freely negotiating in the bargaining process. The FCC’s network non-duplication regulations allow local stations to block cable systems from importing network programming from another affiliate of the same broadcast network – even if the out-of-market broadcast affiliate and the cable network otherwise could reach a negotiated agreement. Similarly, syndicated exclusivity regulations allow local stations providing syndicated broadcast programming to prevent cable systems from carrying the same programs broadcast by out-of-market broadcast stations.

In passing the 1992 Act, Congress was motivated by what then was perceived to be a bottleneck for video distribution. The congressional restrictions sought to “protect” broadcasters in local broadcast markets from competing content offered by cable companies or from retransmission of out-of-market broadcasting content. “Must carry” mandates, in particular, were enacted out of a professed concern that, absent regulatory intervention, cable’s perceived dominance could result in local broadcasting being “blacked out.”

There can be no dispute that the video marketplace of 2012 is vastly more competitive than it was in 1992. With two major DBS providers offering nationwide service, and “telephone companies” providing their own multichannel video services, cable operators today face serious competition. Consumers are now able in many instances to choose between two, three, or even four video service providers. These market developments have rendered whatever worries which existed in 1992 obsolete. And this is even more so with Internet and wireless services now offering consumers even more avenues for receiving video content.

Contending that the 1992 Cable Act and FCC regulations no longer reflect the realities and incentives of today’s video marketplace, a broad array of MVPDs—cable operators, satellite providers, telephone companies—have petitioned the FCC to adopt one or more dispute resolution mechanisms and the FCC has initiated a rulemaking petition to examine various proposals.

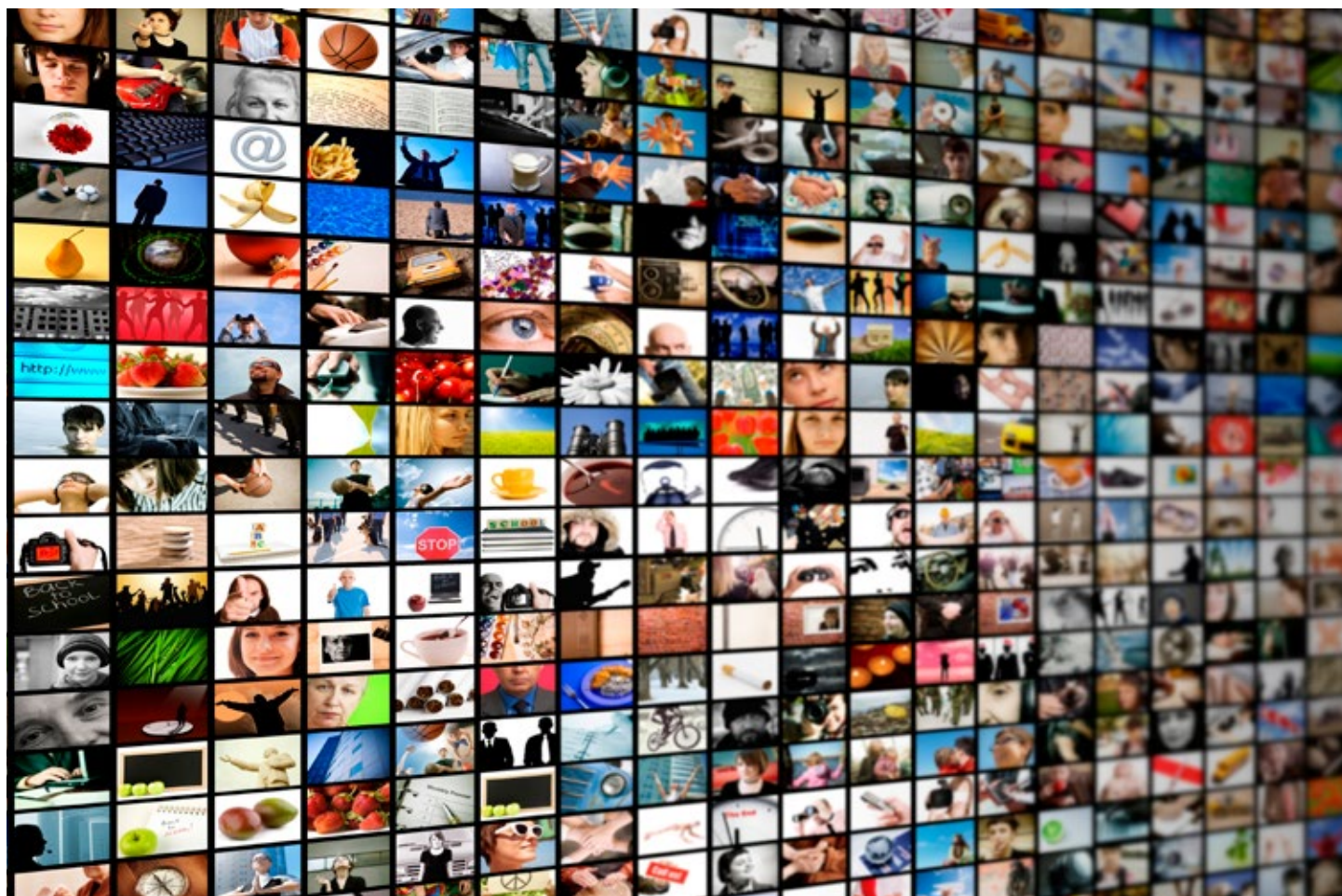
But my purpose here is not to debate the wisdom of any new proposed rules. Rather the point is much more fundamental: Despite any suggestions to the contrary, negotiations between broadcasters and cable operators over retransmission consent do not presently take place in a “free-market” context. As discussed, there are significant government-imposed constraints that alter the claimed free market context.

The preferred public policy response is for Congress to adopt legislation along the lines of a bill introduced by Sen. Jim DeMint and Rep. Steve Scalise that would repeal all the various legacy regulations that overly today’s video marketplace, both those favoring MVPDs and those favoring broadcasters. Then bargaining over carriage of programming could really take place in a free market.

This is the real free-market objective that ought to be pursued.



RANDOLPH J. MAY is President of the Free State Foundation, a nonpartisan, Section 501(c)(3) free market-oriented think tank located in Rockville, Maryland.



Counterpoint: Deregulate Television, But Don't Eliminate Retransmission Consent

BY RYAN RADIA

Most American households regularly watch CBS, ABC, NBC, and Fox. These television networks are distributed nationwide by cable, satellite, and fiber-optic providers—and broadcast over-the-air by hundreds of affiliate stations in towns across the country.

Television broadcasting has been tightly regulated since its inception. Despite recent reforms, such as the DTV transition, broadcasters must still comply with volumes of federal regulations, some dating to the 1940s.

Now, with many in Congress keen on deregulation, the staid rules that govern broadcasting are in policymakers' crosshairs. In the 112th Congress, two leading free marketeers, Sen. Jim DeMint

(R-S.C.) and Rep. Steve Scalise (R-La.), introduced an ambitious bill aimed at freeing up the television market.

Their bill, known as the "Next Generation Television Marketplace Act," would repeal dozens of obsolete and unnecessary regulations. While the legislation is an excellent blueprint for reform, its elimination of "retransmission consent" merits reconsideration.

Before unpacking retransmission consent, a brief history of cable television is in order.

For much of the 20th century, television and broadcasting were synonymous.

But not all Americans could get a reliable signal due to obstacles such as mountains or long distance. To overcome these hurdles, in the late 1940s, some entrepreneurs deployed antennas that "retransmitted" broadcast signals to entire communities—via cables.

And so cable television was born. As its footprint grew, Americans began unhooking their television antennas, turning to cable for more reliable broadcast television access. (Basic and premium channels were rarities until the 1970s.)

But broadcasters were not thrilled about cable companies retransmitting their signals without permission, so they went to court. Ultimately, in 1974, the Supreme Court sided with cable companies, holding that retransmitting broadcast signals did not violate copyright laws.

Congress soon intervened, enacting the *Copyright Act of 1976*. This law permits cable companies to retransmit broadcast signals to local subscribers—without permission from the copyright holders. But a cable company that wishes to retransmit a broadcast signal beyond its local market must pay royalties set by law to the U.S. Copyright Office. The Office then distributes these royalties—which, incidentally, amount to very little—to content creators, broadcast networks, and local stations.

market, giving broadcast networks greater latitude to ink innovative distribution deals—while potentially undermining local affiliate stations' business models.

In reality, however, the DeMint/Scalise bill isn't likely to cause severe disruption in television. Copyright licenses for broadcast content would probably clear through the distribution chain—as they do in myriad other media markets—with each participant earning whatever the market bears.

But why not leave retransmission consent intact and give full copyright protection to broadcast programming? Some broadcast stations add value to their signals; for instance, many stations display “crawlers” underneath programming, showing information including local sports scores, school closings, and election results. Copyright law is ill-equipped to protect these enhancements.

If cable companies could retransmit broadcast programming so long as they obtained permission from the copyright owners—who may not always be the stations themselves—some broadcast

“Under this ‘retransmission consent’ rule, broadcast stations enjoy a quasi-property right over their signals. Cable and satellite companies thus pay broadcasters to access their programming; each station typically earns about 30 cents per subscriber per month.”

Cable continued to flourish. Basic cable channels soon emerged, causing programming choices to explode—and consumers to subscribe to cable in droves. Some cable companies grew into major businesses. All the while, broadcasters, which relied on advertising for revenue, saw relatively modest growth—even as cable companies charged subscribers hefty fees for channel packages that typically included local broadcast channels.

Sixteen years later, Congress stepped in again, enacting the *Cable Act of 1992*. It left the Copyright Act intact, but added a provision to the Communications Act that requires cable companies (and other pay-television companies, including satellite providers) to get consent from broadcast stations before retransmitting their signals.

Under this “retransmission consent” rule, broadcast stations enjoy a quasi-property right over their signals. Cable and satellite companies thus pay broadcasters to access their programming; each station typically earns about 30 cents per subscriber per month. These payments generate billions of dollars in revenue for broadcast stations—and, in turn, for national networks.

DeMint and Scalise take an axe to both retransmission consent and the 1976 Copyright Act's price controls on broadcast copyright licenses (along with many other obsolete regulations). Broadcast content owners would thus gain full copyright protection—including the freedom to set prices for their programming.

On paper, this reshuffling of rights would reshape the television

stations' signals might be retransmitted without the station seeing a dime. This free-riding amounts to unjust enrichment, offending longstanding legal principles of equity.

If the marketplace values broadcast stations' signal enhancements, they deserve compensation. The solution, therefore, is to encumber broadcast signals with two property rights: a retransmission right and a copyright. Some might object to giving broadcast stations a potential windfall by “doubling” their rights. But a property right is only worth as much as the underlying asset (otherwise, the government could boost housing prices by giving two deeds to every homeowner).

It's high time for Congress to modernize the television marketplace. Sen. DeMint and Rep. Scalise deserve applause for their reform efforts. But they should think again about eliminating retransmission consent.



RYAN RADIA is associate director of technology studies at the Competitive Enterprise Institute in Washington, D.C..

Cloud Computing Offers Benefits to States

BY DEBORAH COLLIER

The familiar call for “belt tightening” is being heard not only in the nation’s capital, but also in statehouses, county supervisor and city council chamber meetings across the country. As governments feel the fiscal crunch, elected officials must look for ways to reduce spending. One increasingly attractive option being considered across the country to reduce operating expenses, improve information use, and increase government effectiveness, is cloud computing.

Several states have already taken the initiative to move various information technology (IT) systems to the cloud. Delaware has established a “cloud-first” program for IT purchasing. Michigan has initiated MiCloud, a private data center cloud, which provides services to the state and local governments. Other states including California, Colorado, Minnesota, Texas, Utah, Wisconsin, as well as the District of Columbia, New York City, and Los Angeles have delved into cloud computing at various levels of engagement in order to streamline their IT systems and gain greater efficiency at a lower cost to taxpayers.

In August, the Texas Department of Information Resources (DIR) released “Pilot Texas Cloud Offering,” detailing the department’s use of multi-year cloud services and cloud brokering initiative for state agencies. The report stated that cloud computing is best used for applications that require rapid deployment, have expiring contract obligation on old legacy systems, have varying storage needs, use virtual services, or are based on federal funding with cloud-first recommendations. In addition, DIR found that while security is a major factor that agencies must consider when moving services to the cloud, risks can be managed and prevented if the agency takes a proactive role in protecting information at the outset of the process.

However, the pathway to cloud solutions is not always easy for state and local governments. For example, the District of Columbia’s decision to update its email and document processing systems to a cloud solution in 2008 was not widely adopted by the city’s 40,000 employees. After four years, only 200 employees were using the new email system, and only 2,000 were using the office productivity software. While not ruling out the completion of the existing planned migration, city officials are now exploring other cloud solutions.

The city of Los Angeles also experienced some bumps and bruises along the way when it contracted for a city-wide cloud-based email solution. The system was unable to satisfy the Department of Justice’s Criminal Justice Investigative Services (CJIS) requirements, which protect the security and privacy of the information maintained by law enforcement organizations. The city was forced to amend the original contract to continue use and maintenance of its legacy email system for law enforcement organizations.



Agencies have also encountered obstacles at the federal level. The General Services Administration (GSA) was the first federal agency to deploy a cloud-based email system. On September 28, 2012, the GSA Office of Inspector General issued a report citing several deficiencies in the agency’s email deployment, including a failure to update the cost analysis or maintain supporting documents; not setting performance measures for the project; and, not performing an enterprise-wide assessment of applications migrating to the cloud for redundancies, which could result in wasted resources.

Yet, it is still the case that cost savings can usually be achieved by utilizing cloud computing solutions. In 2009, the Wisconsin Department of Natural Resources (DNR) switched its communications strategy to a cloud-based solution. According to an article in *Cloud Computing Vocabulary*, the DNR’s antiquated video conferencing applications had been costing the agency \$1,330 per month to maintain. Since its migration in 2009, DNR staff has used the new cloud-based application for nearly 3,500 video conferences, saving the department more than \$320,000. The city of New York decided in 2010 to consolidate its 30,000 employee email accounts into one unified cloud-based system for email, instant messaging, and other services. The city government expects to save up to \$50 million over the five-year contract, and plans to further consolidate its IT services using cloud computing solutions in order to realize even greater savings.

Cloud computing products can be an effective tool to reduce the total cost of ownership for an IT system, but public officials should make certain that the cloud services they purchase will fully meet their needs. Learning from the examples provided by other state and federal agency deployments to the cloud, as well as drawing on resources such as those provided by organizations like the Tech America Foundation, Safegov, the Cloud Security Alliance, National Association of State Chief Information Officers, Citizens Against Government Waste and others, will help governments make informed decisions when making cloud purchases.



DEBORAH COLLIER is Technology Policy Director for Citizens Against Government Waste.

Realizing the Promise of Tomorrow's Electric Grid

BY DAVID K. OWENS

The job of every electric utility remains the same as it has for the past 100 years—delivering a reliable, affordable electricity supply. But the world in which we are performing that job continues to change dramatically.

We are moving toward a cleaner energy future. We are building advanced generating stations. We are expanding the use of renewables. And we are creating a smarter and more efficient grid.

EEl and its member electric utilities are particularly excited by the potential that modernizing the grid has to offer the industry and its customers. More than 90 percent of Edison Electric Institute's members already are working to modernize their grid. These efforts are:

- Empowering customers to better control their electricity use
- Expanding the use of distributed generation sources
- Supporting the use of electricity as a fuel for transportation
- Enhancing the reliability and efficiency of the power grid
- Improving service restoration and real-time communication with customers
- Increasing the physical and cyber security of power distribution

In particular, though, modernizing the grid will help us to transform how we serve our customers. For example, many EEl member utilities are now installing advanced metering, infrastructure, and information technologies to improve their call center functions. These technologies will enable us to push more information out to the customer about their electricity service—information about outage response/restoration times, energy usage, and price alerts. And the modern grid will enable us to use multiple modes of communication to do so, including phone, email, and text messaging.

We are working closely with state utility regulators to create a supportive platform for the deployment of smart technology which is an essential element of grid modernization. In addition, we are addressing such issues as cost recovery of new technology investments, prudence determination, accelerated technological obsolescence, data access, privacy, and cyber security.

Not surprisingly, in the economic environment where we find ourselves today, some regulators are exploring the benefits of adding expensive new equipment and redesigned rate systems. To educate regulators and legislators on our modernization plans, we are in frequent communication with them about what modernizing the grid means, and, most important, the many benefits it creates for both the customer and the utility.

At the same time, we are working to keep the technology development moving. If you can keep the technology moving, it will get the consumer moving as well. Just look at how Apple has

stimulated consumer interest in advanced technology with its iPods, iPhones, and now iPads.

Many electric customers are happy with the basic service, but we know that others want more:

- They want more information about their electricity use and options to control it.
- They want information delivered to them anytime, anywhere, not just printed on a monthly bill.
- They want more choice and control. And, long-term, they will want more energy-related services.

For the modern grid to deliver all the value it is promising, our customers will need to reconsider the role that electricity plays in their lives, and the relationship they have with their utility. This will not be easy as these attitudes have been built over the past 100 years. But electric utilities are ideally suited to take on this task.

The electric utility industry differs from other industries in that we have a strong connection with our customers. And these connections extend across all customer classes—from manufacturers to chain stores, and from high-income to low-income residential customers. Our customers—all of them—also know that we will be there to continue to serve them in the era of the modernized grid.

Utilities are well along in building partnerships with the leading technology companies to benefit from the changing business landscape. Choice and diversity are the key drivers. Electric utilities at every point along the value chain are seeking and building partnerships to give themselves and their customers the most options and best services at an affordable price.

These partnerships are helping customers to better manage their energy use. They are enabling utilities to deploy advanced networking products, software, and services. And they are making it possible to deploy smart grid systems rapidly and cost effectively.

The electric power industry's transition to a more modern grid is well underway. With outreach to customers and continued cooperation and dedication between the industry and its public and private partners, we are confident that this transition will empower consumers to get more value from their electricity dollar, while helping utilities to lower their operational costs and improve reliability.

For more information about the electric power industry's efforts to modernize America's electric grid, please visit <http://smartgrid.eei.org>

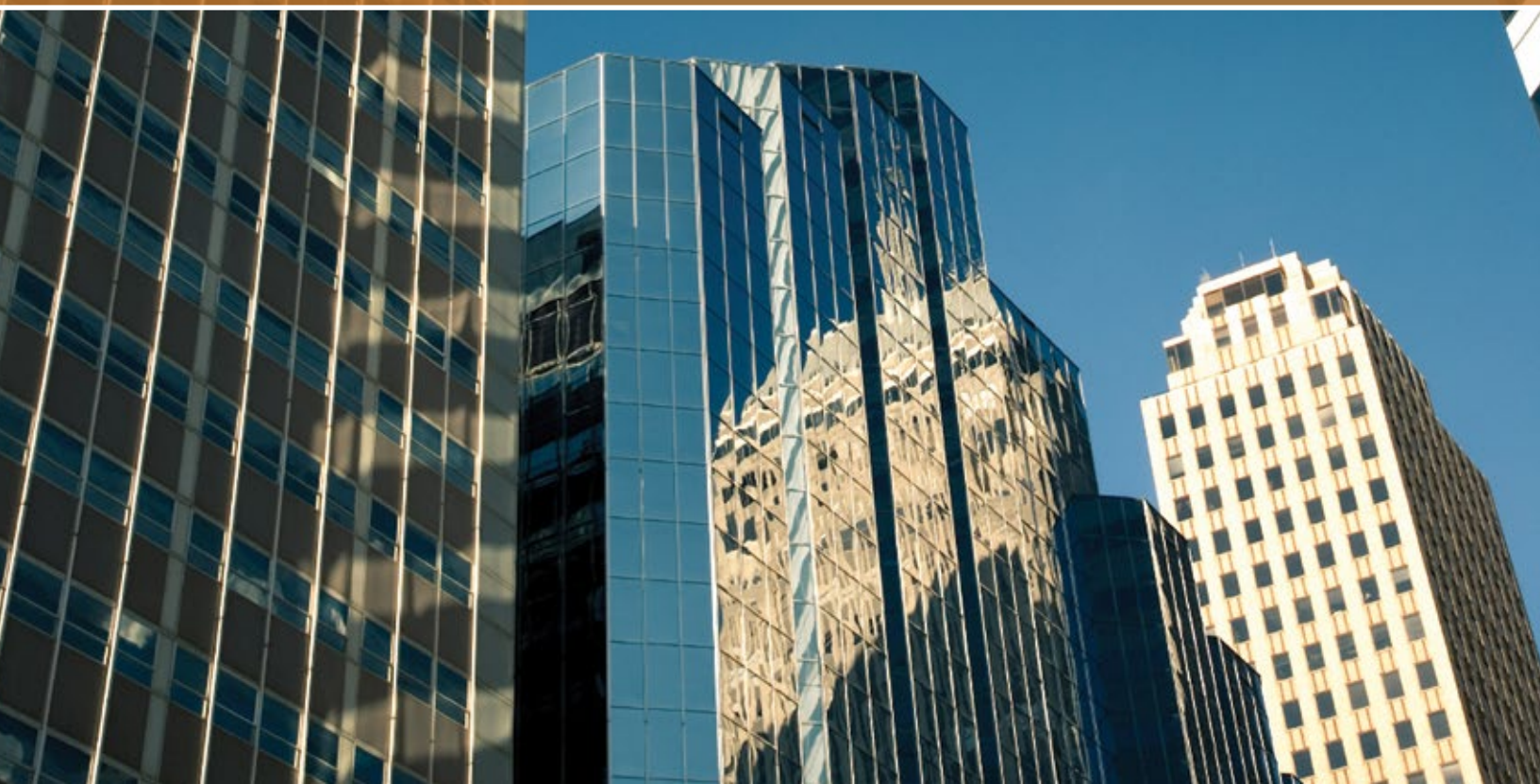


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SPRING TASK FORCE SUMMIT

OKLAHOMA CITY | MAY 2-3, 2013



Two Teachers Who Help Make The Case For Merit Pay

BY WILLIAM MATTOX

When merit pay was debated in Florida several years ago, I couldn't help but think about two extraordinary teachers with four last names. For their remarkable stories make a compelling case for tying teacher pay to student performance.

PORTRAIT OF AN ARTIST AS A YOUNG TEACHER

Laura Simmons came to my high school my senior year. A young teacher, she had been hired during the summer, after our school's legendary AP English teacher—a leather-pants-wearing hippie—decided to “sell out” and became part of The Establishment (Assistant Principal).

Ms. Simmons initially came across as an earnest, no-nonsense, persnickety fussbudget. But one day early in the year, she made the mistake of telling our class that she was self-conscious about a black spot on her chin (where a dermatologist had just removed a mole).

Upon hearing this, I did what any mischievous teenage boy might do. I came to school the next day armed with black construction paper, a hole punch, and some glue, and I proceeded to paste a black spot on the chins of all my first-period classmates before school. We then hid our chins in our hands, propping our elbows atop our desks, until Ms. Simmons arrived and began writing the day's assignment on the chalkboard.

When Ms. Simmons turned and saw all of us staring back at her with black chin spots, she shrieked! And I feared I was in big trouble. But after a long pause, Ms. Simmons punctured the nervous silence that had fallen over our classroom with a deep, cathartic laugh. Apparently, she recognized that our prank was meant to be an initiation—her initiation as Elder into our Tribe of Precocious Learners.

For the next nine months, Ms. Simmons poured herself into our lives, teaching us everything we could absorb about alliteration, and parallel structure, and rhetorical questions, and kernel sentences. She taught us to hear *The Love Song of J. Alfred Prufrock* and to see *The Portrait of an Artist as a Young Man*. And she assured us it was okay to break writing rules occasionally for effect ... so long as we avoided clichés like the plague!

When Ms. Simmons finished her magic that year, she blew out town, Mary Poppins-like, taking her supercalifragilisticexpialidocious teaching skills to some new place, with her new husband, and her new name: Mrs. Hunter.

I only saw her once after that—when we had a reunion of our yearbook staff (which she oversaw) to celebrate winning First Place in a national competition. But I never forgot Ms. Simmons/Hunter.

Because she had a more profound impact on me than any school-teacher I ever had.

Unfortunately, the very best teacher I ever had ranked among the lowest paid in the entire profession. Then, as now, teachers were rewarded more for classroom experience than for student progress under their tutelage. And while no one would question the value of experience, sometimes veteran teachers turn out to be complete duds in the classroom. And sometimes promising young instructors have so much natural teaching talent that they manage to prod their pupils to progress far more than anyone could have possibly predicted.

Given that annual assessments can now measure student learning gains under a particular teacher, many reformers believe that these objective measurements ought to become a significant factor in determining teacher compensation. Not the only factor, surely, but a major factor.

Nevertheless, the National Education Association opposes efforts to link pay to performance. And their affiliate in Florida displayed a close-mindedness that surprised – and disappointed – many Floridians. As columnist Bill Cotterell observed, “The teachers unions’ position on merit pay and tenure has been about as negotiable as the National Rifle Association’s approach to gun control: First, we start with no bill. Then, we’re done.”

Regrettably, failure to tie pay to performance hurts the teaching profession. It makes it more difficult to attract top-tier talent to teaching. And this, in turn, fuels despicable put-downs like, “Those who can’t, teach,” and the even meaner, “Those who can’t teach, teach gym.”

Ironically, the folks who teach gym—and coach sports—know something about the legitimacy of tying pay to the performance of those under one’s leadership. As George Allen notes in *What Washington Can Learn from the World of Sports*, college and professional coaches are usually judged by the won-loss records their teams amass.

Consequently, young upstarts that take underachieving programs to new heights typically earn more than experienced veterans whose talented teams frequently fall short. And while proven coaches get “a long leash”—appropriately—they’re still expected to get results. Indeed, amazingly, the winningest coach in college football history, Bobby Bowden, had less job security in his final years at Florida State than public school teachers with years of nothing-but-mediocre performance.

DÉJÀ VU ALL OVER AGAIN

Speaking of young upstarts, my son Richard had an experience in AP English that seemed eerily similar to my own. One summer, the neo-hippie teacher that was slated to teach Richard’s class

got busted for possession of marijuana. So, the principal asked a young teacher named Mrs. Jennifer Roady-Lawson to take her place.

Early in the year, Richard said everyone was wiggling out because Mrs. Roady-Lawson seemed like an earnest, no-nonsense, persnickety fussbudget. (Or something to that effect.) But a month or two later, Richard reported that students were adjusting to Mrs. Roady-Lawson's high standards. And, at some point, Richard determined that it might even be possible to goad Mrs. Roady-Lawson in a good-natured way.

So, when he was assigned to write an argumentative essay that used humor, Richard did what any mischievous teenage boy might do. He picked a seemingly-humorless topic, staked out a position diametrically opposite his teacher's, and wrote the most persuasive paper he could write.

And this probably understated teachers' potential support. Suppose teachers had been asked: "In what classes are your students more motivated to excel—those in which they simply pass or fail ... or those in which they can earn an A?" I suspect nearly all would have said students typically work harder in classes where they can earn an A. Yet, if this is true of students, would it not also be true of teachers? Human nature being what it is, wouldn't teachers be more apt to go the extra mile if they knew that they'd earn more if their students learned more?

Some people resent this argument because they think it diminishes the nobility of teachers who "aren't in it for the money." I understand this objection because I know some teachers who have a *relentless drive to excel* that seems unfazed by external factors.

Yet, the fact that there are such teachers only increases my support for merit pay. Indeed, we need for great teachers to be well

"Some people resent this argument because they think it diminishes the nobility of teachers who 'aren't in it for the money.' I understand this objection because I know some teachers who have a relentless drive to excel that seems unfazed by external factors."

To her great credit, Mrs. Roady-Lawson did not penalize my son for playfully poking fun at her political point of view. And when Richard came home proudly displaying a top score on that assignment, I told him he had special reason to be pleased—because a person who disagrees with your position is more apt to see the weaknesses in your argument (and the pitfalls of your humor) than someone who agrees with you.

Not surprisingly, AP English ended up being one of Richard's favorite classes—thanks largely to his open-minded, even-handed, intellectually-challenging teacher with the hyphenated last name.

Nevertheless, Mrs. Roady-Lawson earned less pay for her work than more-experienced teachers in Florida, including some who failed to share her interest in challenging students to wrestle with both sides of a controversial issue. In fact, during the merit pay debate, one veteran teacher from the Orlando area actually assigned his students to write letters to the Florida Legislature using a union "fact sheet"—which only presented arguments against merit pay—as their guide. (That teacher was exposed, but not fired.)

Now, it would be unfair to suggest that this unscrupulous teacher was representative of all who opposed merit pay. But it would be equally misleading to suggest that the FEA represented the interests of most teachers—especially Florida's best teachers—in lobbying against merit pay.

Indeed, a major survey of 20,000+ Florida teachers found respondents divided evenly when asked: "Do you think all teachers with the same number of years in the profession should be paid the same, regardless of their skill level?"

compensated, lest they find it tempting to "sell out" and leave the classroom when their household budgets get squeezed.

In conclusion, when unions cast aspersions on reformers seeking to reward excellent teachers, it reminds me of the way Lt. Wickham slyly impugned the character of Mr. Darcy in *Pride and Prejudice*. And while I recognize that teachers are predisposed to trust the unions that claim to represent them—just as Elizabeth Bennet was predisposed to trust Lt. Wickham—I hope good teachers will give reformers a chance to prove their honorable intentions.

For if any truth might allay the concerns of those in the noble Tribe of Great Teachers Who Aren't In It for the Money but Still Deserve to be Well Compensated, it is this:

Sometimes a "foe" who seems at first to be an earnest, no-nonsense, persnickety, fussbudget proves to be a friend who's been seeking your best interest all along.

That may sound suspicious to some. But it's the lesson Elizabeth Bennet learned in *Pride and Prejudice*, and the lesson my son and I both learned ... from two extraordinary teachers with four last names.



WILLIAM MATTOX is a resident fellow at the James Madison Institute.

In Oklahoma, Special-Needs Scholarships Are Changing Lives

BY BRANDON DUTCHER

"There is no business I'd rather be in than public policy," says my friend Joe Lehman, president of the Michigan-based Mackinac Center for Public Policy. "Policy changes lives. And education policy may change lives most of all."

He's right. It's happening in Oklahoma.

According to latest ALEC Report Card on American Education, only 6 percent (that's not a misprint) of Oklahoma's fourth-grade students with disabilities are proficient in reading. Obviously, something has to be done.

In 2010 Oklahoma's Republican legislature passed, and Democratic Gov. Brad Henry signed into law, the Lindsey Nicole Henry Scholarships for Students with Disabilities Program Act. Children with disabilities—those for whom an individualized education program has been developed—are now eligible to receive a scholarship to attend a private school.

The program is already changing lives. Consider Phylicia, a teenage special-needs student in Tulsa who was bullied relentlessly.

As is the case nationwide, bullying is a big problem in Oklahoma's schools, and special-education students are often the targets. In Sand Springs, for example, four students carrying box knives were arrested after threatening to assault a special-needs student. In Crescent, three students were charged with felony assault after they kicked around an autistic 12-year-old at school and posted a recording of the incident on YouTube. In Broken Arrow, a special-needs student was beaten with nunchucks by another student, had his head forced into a toilet, and was even shoved by a substitute teacher. Unsurprisingly, the boy cried daily and said he wanted to kill himself.

Patricia Hughes, an educational psychology professor at Oklahoma State University, says bullying in Oklahoma schools "is leading to suicide more and more often, more and more young. We're seeing an escalation in the incidents, in the violence. Here, we're seeing suicides happening very, very, very close to us."

Phylicia, too, talked about killing herself, her mother says. "When Phylicia was in public schools, she would literally crawl in a ball because she did not want to go to school. To go back to that time now, it frightens me every time I think about it, you know."

"Sometimes kids would tease me about things and say what a retard I was, and it upset me really bad," says Phylicia, who has Asperger's Syndrome and other disorders. "So I would go into the bathroom and I would eat my lunch in there, or cry about it in the bathroom."



Phylicia's mother happened to see an article in the newspaper one day about the new Henry Scholarships. "I immediately just got so excited," she says.

Today Phylicia is thriving at Town & Country School, an accredited, nonpublic school in Tulsa which serves students with learning disabilities and attention disorders. "I love my teachers," Phylicia says. "They talk to me, and whenever things are going bad for me it seems like they really are worried about me."

Her mother sees the changes in Phylicia. "Confidence, self-assurance, being able to feel like she's somebody. Walking with her head up tall. She's got friends. She feels comfortable with the teachers. Phylicia wakes up wanting to go to school."

"I feel like that I can talk to the kids, because I mean I have made a lot of friends at Town & Country that I couldn't make at the other school," Phylicia says. "I feel accepted."

She's not the only one whose life is being changed. The powerful 24-minute documentary *Lindsey Nicole Henry Scholarship Stories* (I'm not embarrassed to mention it in the same sentence as *Waiting for Superman* or *The Cartel*) tells the stories of Rob and Chloe, too. I encourage you to watch it at <http://bit.ly/Ryk5ZW>.

Not everyone is pleased with the program, of course. Two school districts in the Tulsa area, Jenks and Union, actually filed a lawsuit against parents who had the audacity to apply for the scholarships. "It's like suing grandma for using Medicare," marvels state Rep. Jason Nelson, the law's co-author.

PR textbooks for years to come should cite the cautionary tale of the superintendents making roughly a quarter-million dollars annually who, shortly after leading their districts onto the federal needs-improvement list, decided it would be a good idea to sue the parents of autistic children.

Fortunately, the Oklahoma Supreme Court ruled that the school districts don't have standing to sue.

The governor who signed the Lindsey Nicole Henry scholarship program into law is also the father of Lindsey Nicole Henry, a little girl who was born with a rare disease called spinal muscular atrophy. At just seven months old, Lindsey died in her parents' arms.

Neither the governor nor anyone connected to him asked for the bill to be named for Lindsey. Rather, as state Rep. Kris Steele pointed out, "it was suggested to him as a way to honor the memory of his daughter and let it be known for generations to come that she, and her parents, are helping to improve the lives of special-needs children across the state."

It's already improving Phylicia's life. Without the scholarship, "I would probably feel hopeless," she says, "because school was a daily challenge for me every day, and now it's not anymore and I'm glad."

Policy changes lives.



BRANDON DUTCHER is vice president for policy at the Oklahoma Council of Public Affairs and a member of ALEC's Education Task Force.

LEADERS [&] LAGGARDS

A State-by-State Report Card on
Public Postsecondary Education

Introducing the Chamber of Commerce's Leaders and Laggards

A State-by-State Report Card on Public Postsecondary Education

BY EDWARD WALTON

The cultivation of skilled workers is on the decline in America. Once considered the key to a better life and increased opportunities, an American college degree is no longer a guarantee of future success. Many graduates, already burdened by a mountain of student-loan debt caused by tuition hikes, are finding themselves without work, lacking the skills and knowledge necessary to properly contribute to society. Surprisingly, however, there are more than 3.4 million unfilled jobs in the United States, but young graduates are increasingly unqualified to step into these roles.

At the International level, America is falling behind other nations; out of 34 industrialized countries, America is ranked 15th in young workers with a college diploma. That, however, does

not mean that students are not attending American-post-secondary schools—they are just not graduating. While seventy percent of high school graduates attend some form of higher education, slightly fewer than half of enrolled students graduate within six years. By subsidizing these non-graduating students, public higher education institutions are burdening the taxpayer with inordinate expenses and forcing states into greater debt. With personal, state, and federal finances at their limit, these trends are unsustainable and jeopardize America's ability to remain competitive in the global market.

For years, improving higher education revolved around increased inputs, such as spending and student attendance, but these methods have proven unsuccessful. In an effort to promote a more efficient, affordable, and effective postsecondary education system, focused on increasing both the number of graduates

and the quality of education, the Chamber of Commerce released *Leaders and Laggards: A State-by-State Report Card on Public Postsecondary Education*.

Leaders and Laggards examines the performance of two-year and four-year public institutions in all 50 states, grading them in six areas: Student Access & Success, Efficiency & Cost-Effectiveness, Meeting Labor Market Demand, Transparency & Accountability, Policy Environment, and Innovation. These six categories provide legislators, business leaders, and citizens with the necessary information to improve their state's system of higher education, shifting the focus from inputs to student outcomes, return on public investment, and transparency.

are worth more than others. For instance, bachelor's degrees from Virginia, Michigan, Alabama, Texas, and California lead all other states with graduates earning a median income of \$20,000- 28,000 more than someone with only a high school diploma. Other states, such as Montana and Wyoming, did not fare as well, with graduates only earning 12-15 percent more than high school graduates.

In the Meeting the Labor Market Demand "Spotlight", *Leaders and Laggards* highlights the successful Florida Education and Training Placement Information Program (FETPIP), implemented in 1988. FETPIP follows students in K-12 through their postsecondary education and finishes once they enter the labor market. This data allows Florida universities to understand their strengths

"After a half century of devoting significant resources to expanding access and then hoping for the best when it came to outcomes, leaders and students are now rightly demanding a better return on their investment."

Each of the six categories examined in *Leaders and Laggards* contains a review of the "Rationale and Methodology," explaining the purpose of the section and how the data was collected; relevant "Findings," revealing states' successes and failures; and a "Spotlight," which focuses on a particular state that serves as an example of success. For education reformers, these sections provide two essential components to positive policy change: (1) information about the source of the problem, and (2) methodically crafted plans with reasonable objectives for implementing change. Policymakers can use the grading information to recognize how their respective state is faring and opportunities to advance using proven methods.

The study claims student access to education, coupled with the completion of this education, is essential to the development of skills and the betterment of society. But *Leaders and Laggards* also recognizes that attainment of these goals should not come at the cost of a lower quality of education: "churning out additional degrees and certificates may well be an illusory victory if increases in productivity come at the expense of program quality or rigor" (27).

By measuring differences, such as median annual wages, wage premiums, and unemployment rates between postsecondary degree holders and those who hold only a high school diploma, the Meeting Labor Market Demand section reveals how much value a degree is creating for both the recipient and the employer. Examining this data reveals that degrees from some states' universities

and weaknesses, and those degrees employers value most. Adjustments can be made to accommodate the students and the employers, increasing the quality of education and the value of the investment.

Former U.S. Secretary of Education and current President of the Chamber of Commerce's Forum for Policy Innovation, Margaret Spellings, comments on the importance of reforming public higher education: "After a half century of devoting significant resources to expanding access and then hoping for the best when it came to outcomes, leaders and students are now rightly demanding a better return on their investment." The betterment of individuals' lives and the promotion of a healthy economy rely on quality higher education. ALEC applauds the Chamber of Commerce's recognition of the necessary reforms and recommends that, if you want to start positively reforming higher education in your state, *Leaders and Laggards* is a great reference to consult in order to begin making improvements.



EDWARD WALTON is Legislative Analyst for ALEC's Education Task Force.

National Scandal Of Non-Graduating Students Cost To Public

BY DR. HARRY C. STILLE

For the past 20 years the Higher Education Research/Policy Center, Inc. (HER/PC) has conducted public higher education institutional research in admissions and outcomes which includes students who do not graduate. In our responses to Governors and Legislators we identified the cost in their states for non-graduating students on their public senior institutional campuses each year who will never graduate. This number and percent of non-graduates basically remains constant from year to year. The state appropriation cost for these students does not include the student or parental costs through tuition, fees, books, meals, lodging and travel.

These state appropriation institutional costs for non-graduating students are a national scandal for which the public is virtually unaware, even though they pay the bill.

The majority of senior public institutions have a goal to increase enrollment on the ploy that they will gain more college graduates with this additional enrollment. When academic requirements for admissions enrollments are lowered to increase students on campus, they may actually increase the non-graduation rate status and not increase the graduation rate. In most states there are very few academically "college ready" students not already in college.

According to the *American College Testing Act*, based on 1,623,112 students who took the ACT college entrance test in 2011, only 25 percent of students were college ready in all four areas of the test (English, Reading, Math and Science). Another 15 percent of students were college ready in three of the four areas. Forty-three percent of students met only one benchmark or none on the test. This goes back to our position as to why any of these 43 percent may be in a senior public institution.

On average, there are about 40 percent of students nationwide who are enrolled full time on senior institutional campuses, but who will never graduate even considering public institutional intrastate transfers. This national cost for these 1.8 million non-graduating students in the United States for faculty, staff, administration and facilities is about \$12.9 billion each year.

The range of non-graduates is from 68.2 percent in Alaska to about 26.9 percent in Virginia, 26.8 percent in Washington and 26.6 percent in Delaware, depending on student graduation rates which include intrastate transfers. The state costs for non-grads ranges from \$1.377 billion in Texas to \$14 million in Vermont,

again depending on enrollments and the number of institutions within those states. One reason the non-graduation rate in some states may not be as poor as others is because of grade inflation or grading scale criteria used within the state. All graduation rates are made higher by grade inflation. Institutional grade scales to figure Grade Point Average (GPA) may be 4-0 or 4-0 plus, in which the latter makes a big difference on success to graduation.

Another issue related to student cost factors is that students enrolled who have lower academic admissions profiles are more likely to have to take out loans to subsidize their college costs, only to find they cannot adequately do the academic work required and are more likely to drop out. This only adds to the debt crisis many students face in trying to pay back college loans they should not have incurred in the first place. The institutions are not honest with these academic border-line students when they are enrolled.

There are 10 states that have half or more of full time students enrolled every year that will never graduate. They are: (% with annual cost to state) AK- 68.2% (\$111 m); ID - 60.4% (\$148m); AR - 55.7% (237m); NM - 53.8% (\$150m); TN - 54% (\$369m); MT - 53.2% (\$61m); UT - 51.1% (\$178m); NV - 50.3% (\$114m); LA - 50% (\$370m) and OK - 50% (\$312m).

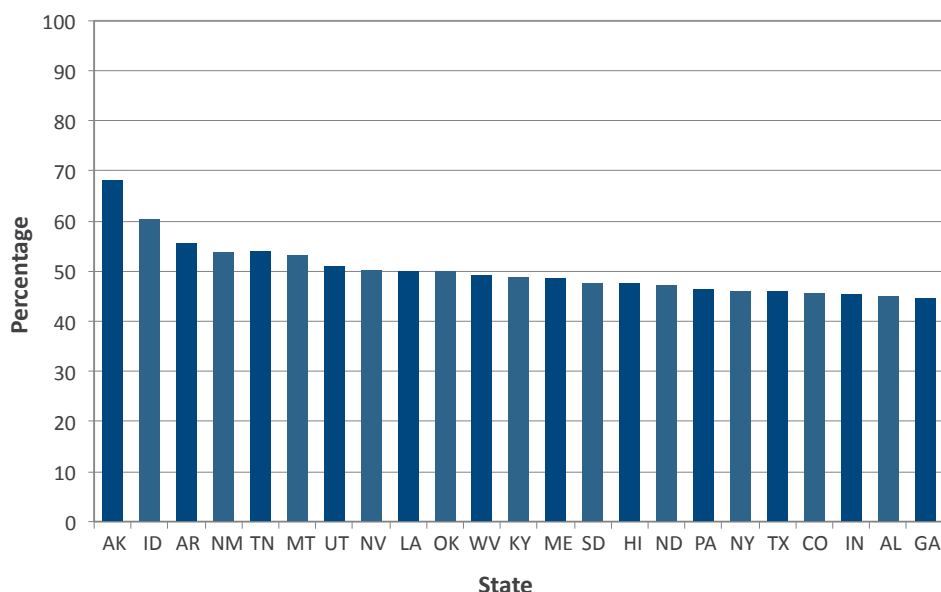
Another thirteen states have more than forty-five (45%) that will not graduate. They are: (% with annual cost to state): WV - 49.3% (\$150m); KY - 48.8% (\$297m); ME - 48.7% (\$58m); SD - 47.7% (\$46m); HI - 47.6% (\$52m); ND - 47.2% (\$78m); PA - 46.5% (\$344m); NY - 46% (\$863m); TX - 46% (\$1.377 billion); CO - 45.6% (\$178); IN - 45.5% (\$275m); AL - 45% (\$290m) and GA - 44.7% (\$510m).

The National Center for Public Policy in Higher Education and the Southern Region Educational Board (NCPPE/SREB) (June 2010) suggest in their analysis report "Beyond The Rhetoric" essay: "Increasingly, it appears that states and senior public higher education institutions may be enrolling students under false pretenses. Even those students who have done everything they were told to do to prepare for college find, often after they arrive, that their new institution has deemed them unprepared. Their high school diploma, college-prep curriculum, and high school examination scores did not ensure their college readiness."

Although 62 percent of these students do graduate nationwide after ten years (UCLA- Higher Education Research Institute), it is questionable that they can function in today's higher technological environment or qualify for high tech jobs available around the country. There seem to be few college grads qualified to be employed in these high tech positions because their degrees were in the soft sciences or no science at all. The evidence seems to be clear that many college students won't make the effort to enroll in the math or science areas where more exacting answers are required. STEM education at the two-year or four-year level is of great economic value.

The National Center for Higher Education Management Systems and their "Delta Cost Project for College Cost - Productivity and Accountability", state today's cost per graduate for four-year students who do complete their baccalaureate degrees ranges from \$45,000 in Florida to \$142,000 in Alaska for state and related costs.

Percentage of Full Time Students that Fail to Graduate



Senior higher education institutions are the most wasteful agency in any state's government appropriation process. Yet, senior higher education and its value have been severely oversold to parents, students and the public. These institutions and their graduates do modestly contribute to the state's economic development, but many graduates go to government jobs and take from the system not add to it.

Knowing all this begs to ask the following question: "Who knows about this student non-graduation cost to the public on the senior campus and what is being done to correct the problem?" The answer is simple. Many people know, but none are doing anything to correct the problem, because they are unwilling to go against the institutional leadership of Board Members or Administrators and faculty. Legislators cozy-up to their alma maters and institutions within their districts as they worry about losing votes in the next re-election cycle. Legislators believe the lobbyists accounts of the institutions positions and rarely look at any institutional data to find out what the truth is. Members of Institutional Boards, Boards of Regents, Commissions on Higher Education or other controlling agencies are all "cheerleaders" for the institutions. No one cares about the student or the taxpayer who funds this whole process. Those in charge go through the motions, but never do anything. It is all talk and little action.

The senior college campus, as we have said before "is the last vestige of the medieval fiefdom of ancient Europe," and the nobles who work there do not want any outside interference, even from those who pay the bills. "Give us all the funds we need and leave us alone."

The HER/PC, Inc. has looked at the senior higher educational data for 20 years. As a result, we have ventured into this issue of taxpayer cost for non-graduating students on campus each year. Our desire is to educate the public and legislators about - THE HIGH COST WHICH IS NOT BEING PLAYED OUT IN THE PRESS ANYWHERE.

It has been the aim of the HER/PC to try to inform people in government, agencies and citizens about the abuses taking place in our post-secondary education system. There is so much evidence showing how the system is failing everyone. The good academic student is short changed because funds are shifted from them to weaker students for their numbers on any campus. Institutions enroll students who are not "college ready" academically because they need these students to cover the costs of the expanded campus of faculty, staff and facilities to maintain the status quo. Institutions complain that they must enroll students who are not "college ready" because high schools do not prepare them properly. The need for remedial/developmental studies in the higher education system means the taxpayers pay twice of this type education experience.

Every public school district should pay for all R/D classes at the college level.

Our suggestion to control extreme overall costs for senior public institutions nationwide is: 1). Only enroll students who score 910 SAT or 19 ACT; 2) enroll only students who do not need remedial/developmental enrichment classes and 3) enroll only students who come from the top 50 percent of their high school class rank. All other students would enter the two-year system and earn their way to the senior system.

Our argument has been for years, "why do the senior institutions enroll or need these poorly prepared students in the first place?" Every one involved with the campus wants it to grow with more students, because it builds the prestige locally and state wide. The pitch today is the need for more students on campus to help attain BA/BS degrees years from now. That really is a myth, in that these poorly prepared students are not likely to graduate at all anyway. If they do graduate, what do they know and how much do they owe? There is much evidence now that students in college and those who have graduated do not show good evidence of having had a good learning experience while in college.

The HER/PC non-graduation rate data we show is based on the NCES – IPEDS data and definitions of the Federal Department of Education and individual state data and national publications. State allocation cost factors are from SHEEO-SHEF Project data of 2011.

We are open to comments and questions.

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Arizona's Education Savings Accounts after One Year

BY JONATHAN BUTCHER

By the end of Nathan's kindergarten year, his mother Amanda was desperate to find a way to help her six-year-old son. Nathan, who was diagnosed with autism, struggled because he could not concentrate and block out background noise like most of us can.

"Kindergarten was stressful," Amanda says, reflecting on the experience.

Amanda was hopeful when she enrolled Nathan in the first year of Arizona's Education Savings Account program in 2011, and, since then, she has witnessed a dramatic change.

"Nathan's first year at his new school was nothing short of amazing," Amanda reports.

Conceived by the Goldwater Institute in 2005 and approved by the state legislature in 2011 for students with special needs, Arizona's education savings accounts set a national standard for education reform. With an account, eligible families can take advantage of the rapidly expanding number of educational options, such as private school tuition, homeschooling, virtual schools, and even college savings plans. The state deposits student funds from the funding formula into a parent-controlled bank account. Parents use a check card or PayPal to make purchases.

Approximately 150 students were awarded an account in the program's first year. As expected, families used the program in a variety of ways—some chose to homeschool, while others chose private schools specializing in certain diagnoses, supplementing with online work in some cases.

For Nathan, who had a speech delay, the combination of his new school and one-on-one tutoring brought him to the level where he speaks in complete sentences and asks questions.

"It's wonderful that we can have mini-conversations now," says Amanda.

With the Internet available to most families today, parents can search for tutoring programs, like Nathan's, or have a video chat with a teacher on the other side of the country. Students can take classes online or watch lectures on YouTube. K-12 education is no longer about where students are educated but how, and education savings accounts are the first policy solution to give parents access to so many options.

In its inaugural year, the savings accounts brought two remarkable surprises: Parents formed a vibrant and connected community of savings account families, and the first audit of the program was successful enough that policy makers can feel optimistic about the future (the need for vigilance remains).

Of their own initiative, savings account parents created a message board on Yahoo.com. The discussions on this virtual space indicate that parents are savvy shoppers when it comes to all types of education services. They watch carefully how much they spend on everything from tuition to textbooks to tutors. With over 100 members, the message board contains dozens of discussions on questions ranging from "What are the best schools?" to "Where can I buy a math curriculum?"

Meanwhile, the Arizona Department of Education (ADOE) implemented a new set of rules and audit procedures.

To prevent fraud, the ADOE gives education savings account families a check card that can only be used at stores and web sites "unlocked" by the state agency. This security feature prevents most types of fraud, but parents can make purchases at large retailers such as Wal-Mart. To prevent misuse at these stores, the department audits all receipts at the end of each quarter prior to the next disbursement. Most cases that triggered investigation during the first year involved parents purchasing items that they believed were approved expenses, and these issues typically were resolved after the ADOE contacted families. As more families are added to the program, the department will need to automate these procedures to reduce the potential for account abuse.

In 2013, the program expands to include children of active-duty military parents, children adopted out of the state's foster system, and children in failing schools. This effectively doubles the program's reach to 20 percent of Arizona public school students.

Innovations like education savings accounts are always met with protest, so it was no surprise when the local teachers' union filed a lawsuit in 2011 to stop the program before it began. Central to their suit was the contention that savings accounts constitute vouchers, which were ruled illegal in Arizona in 2009. Vouchers were ruled unconstitutional because of the state's Blaine amendment, which is also a provision of 37 other states' constitutions.

The Goldwater Institute, the Institute for Justice, and Arizona Superintendent John Huppenthal defended the program in court, and in January, a superior court judge ruled that the accounts do not violate the state constitution. Opponents have already filed an appeal. The outcome of that decision will not only impact current savings account students like Nathan, but future account families in Arizona and other states with Blaine amendments.

Nathan enters second grade this fall, and Amanda treasures all of his successes from his first year.

"I can't wait to see him grow academically now that we are able to communicate," she says.



JONATHAN BUTCHER is Education Director at Goldwater Institute.

Kids First — No Excuses, No Exceptions

BY PATRICK GAROFALO

"Kids First - No Excuses, No Exceptions" - that was the motto of the 2011/2012 Minnesota House Education Finance Committee. This clear, concise statement provided members of the legislature with a statement of purpose for the recently concluded two year legislative session. For too long, Minnesota's education system had focused on the 'wants' of adults rather than the 'needs' of children. The adults in the system continued to cash their paychecks, while at the same time many children failed to receive the quality education they deserved and taxpayers were paying for. For years, an "adults first" mentality drove the legislative agenda at the Minnesota State Capitol. In fact, for decades the Minnesota education establishment operated with an agenda that was not focused on what was best for kids. For too long the education legislative agenda focused on the health care and pension payments of employees instead of the academic services of students. The new legislative majority decided this was unacceptable. We decided Minnesota could do better - and do better we did.

"...be bold. Think big. Don't wait for tomorrow to do what should be done today. History is on the side of the education reform movement."

The new agenda was bold, fresh, and ambitious: providing alternative pathways to increase the pipeline of high quality teachers in Minnesota's classrooms; eliminating "super-tenure" laws in which some non-classroom teachers retained employment at the expense of classroom teachers; collective bargaining reform to level the playing field between local school boards and the teacher's union; the requirement of a statewide teacher/principal evaluation with a minimum requirement of 35 percent of that evaluation tied to student achievement; opportunity scholarships to provide low-income children trapped in failing schools the option of attending a non-government run school; the termination of an ineffective and wasteful \$130 million dollar "integration program"

that had a 100 percent (Yes, 100 percent!) failure rate at integrating Minnesota schools; tenure reform; fair funding for Minnesota's charter schools; passage of a Parent Petition Law (Parent Trigger) to empower parents in persistently low performing schools; the elimination of the so-called "January 15th penalty" which financially punished schools that didn't agree to a contract with teachers before an arbitrary January 15th deadline; elimination of the antiquated "Last In, First Out" teacher retention policy; early graduation scholarships to encourage high school students to graduate earlier which lowered the cost of college and saved taxpayers millions; an additional \$650 million dollar investment in a reformed education system - and that was just the first year of the session!

In 2010, a new, reform-minded legislative majority won control of the Minnesota House of Representatives. In 2011, under the leadership of new Speaker of the House Kurt Zellers, the legislative majorities passed ambitious reform agendas to strengthen teacher quality, improve student achievement, and make the education system more responsive to the needs of families. Such a bold agenda was something for which the defenders of the status quo were clearly unprepared. They responded with the usual litany of excuses: "The legislature was moving too fast" and "taxes must be raised," or the borderline comedic view that parents can't be trusted to make educational choices for their own children - only government can. Unfortunately, the status quo did temporarily block some of the previously mentioned agenda. But they couldn't stop everything, and we were successful in implementing more education reform than in the previous ten years combined. The reforms enacted in Minnesota are good for parents, great for children, and fantastic for the taxpayers.

The lesson to be learned from the reform minded legislative majority in Minnesota, Scott Walker's budget repair successes in Wisconsin, and the bipartisan education reforms of Colorado and Delaware is this: be bold. Think big. Don't wait for tomorrow to do what should be done today. History is on the side of the education reform movement.

It is clear that there is a nationwide consensus on education reform, more parental choice in schools, leveraging competition, incentivizing high quality charter schools, and eliminating 1960's teacher retention policies. The metaphorical train is leaving the station. The only question is whether you want to be in the locomotive or in the caboose. But be warned, if you want to be in the locomotive, you are going to have to catch up to me and a lot of other Minnesotans if you want to do it.



PATRICK GAROFALO, Minnesota State Representative.



Nevada's P-16 Advisory Council

Building a Seamless, Uunified, Statewide Longitudinal Education Data System From Pre-School Through Postsecondary Education And Into the Workforce

BY SEN. BARBARA K. CEGAVSKE

On October 7, 2012, Governor Brian Sandoval issued an Executive Order directing Nevada's P-16 Advisory Council to review existing data systems and make recommendations for the design and implementation of a statewide longitudinal education data system that tracks student and educator data from early childhood through postsecondary levels of education and into the workforce. As the newly appointed Chair to the Council, given this enormous task, I was reassured that the Council was permitted to convene as frequently as necessary to conduct its review and develop recommendations!

The Council met four times between November 2011 and August 2012. Representatives from all agencies that would be impacted by the data system were called to assist in developing an action plan. This included not only the "logical" agencies, such as Nevada's Department of Education (NDE) and the Nevada System of Higher Education (NSHE), representation also included the Division of Health and Human Services (DHHS) (for the early childhood education component), and the Department of Employment, Training and Rehabilitation (DETR) (for the workforce perspective).

Because of the enormity of the task at hand, the Council felt that a Vision Statement relating to the data system would help to keep the members on track. The following Vision was adopted:



**Nevada's Statewide Longitudinal Data System (SLDS)
Vision Statement**

A seamless, unified information sharing system enabling data driven decision-making along the P-20 continuum

Three working groups were convened to review and develop recommendations relating to: Data Governance Structures, Funding and Resource Needs, and Data Policies. Based upon the work of the groups, recommendations/considerations have been forwarded to Nevada's governor and legislature for consideration; expected outcomes from the project were also presented.

DATA GOVERNANCE STRUCTURES

The council recommends a federated system for a P-20W (workforce) statewide longitudinal data system (SLDS) with contributing agencies responsible for the ownership of their data and its integration into a data matching hub. Initial groundwork for the matching hub of the system will be housed in Nevada's Department of Education. A feasibility study will be conducted to make the final determination of the location of the P-20W SLDS.

“...the expected benefits of the new P-20W SLDS are exciting and we expect that the benefits of the system will impact the academic performance of our students in a positive way.”

FUNDING AND RESOURCE NEEDS

Nevada's Department of Education was awarded a \$4 million federal grant to support the design and implementation of the P-20W SLDS over the next three years. The grant project, as implemented, will create and assign a Unique State Personal Identifier to students, teachers, and individuals in the workforce.

The grant funds will also support an in-depth technical needs assessment to determine solutions for implementation of the P-20W SLDS. Based upon the results of the needs assessment, it is anticipated that funding will not be available to incorporate early childhood data into the P-20W SLDS. The DHHD indicated that it will request \$4 million in State funds to support the components of the P-20W SLDS not funded through the federal grant.

DATA POLICIES

At this time, the council believes that data policy considerations must wait until the results of the technical needs assessment can be analyzed.

EXPECTED OUTCOMES

The work of the Council has been intense over the last year. However, the expected benefits of the new P-20W SLDS are exciting and we expect that the benefits of the system will impact the academic performance of our students in a positive way. We believe that through this system:

- Teachers throughout the K-12 continuum will have access to early indicators to help with targeted and effective student education plans and identifying interventions;
- School administrators will have quick access to student data, which will help them to better guide staff concerning course assignments, testing, and time resources;
- Parents and students will be able to use the tools to monitor academic progress and to make informed decisions about courses and programs;
- District administrators will be better able to allocate teacher and staff resources, and provide professional development opportunities;
- School board members (state and local) will receive relevant data to more effectively manage resources and staff, and evaluate effective programs, textbooks, and interventions;
- Postsecondary educators and State higher education executives can identify necessary courses, effective transition strategies, and staffing resources to meet the needs of incoming students;
- Business leaders will be able to communicate areas of need in the workforce; and
- The Governor and legislators will be able to create policies and measure the impact of new and existing policies to support continuous improvement and effectively allocate State resources.



SEN. BARBARA K. CEGAVSKE served in the Nevada Assembly from 1997-2001 and in the Nevada Senate from 2003-present. She has been a member of the P-16 Council since 2007 and is the current Chair of the Council.

High School Graduates: Quantity over quality?

BY TERRY L. STOOPS

In early August, North Carolina education officials announced that the state's graduation rate exceeded 80 percent for the first time. The game of political one-upmanship that followed was legendary.

Unfortunately, the excitement of political sparring eclipsed an underlying policy dilemma. We should welcome higher graduation rates. As a nation, we want our children to succeed. On the other hand, research suggests that more and more high school graduates are unprepared for the demands of postsecondary education and the workforce. Are public schools sacrificing quality for the sake of quantity?

One legitimate question is whether graduation rates are reliable in the first place.

While far from perfect, graduation statistics are more accurate today than they have been in the past. In 2005, the nation's governors signed the Graduation Counts Compact of the National Governors Association. The compact was a voluntary agreement to calculate and report statewide graduation rates using a uniform method – the four-year cohort graduation rate. The cohort rate represents the percentage of students who begin ninth grade and graduate four years later, adjusted for enrollment changes.

Three years later, what began as a voluntary agreement became a mandate under the *No Child Left Behind Act* (NCLB). Federal regulations required states receiving NCLB funds to begin reporting disaggregated state, district, and school graduation rates following the 2010–2011 school year. This year, all U.S. states will report their graduation rate using the four-year cohort method.

Universal adoption of a method of calculating graduation rates promises to offer welcome relief from the ludicrous graduation rate claims of years past. In 2005, brazen state education officials in North Carolina claimed that the state had a graduation rate of 97 percent. A year later, the state adopted the four-year cohort method of calculating graduation rates and reported a more credible rate of 68 percent. Other states have found their cohort rate to be significantly lower than graduation rates calculated using state-invented formulas.

Even the most carefully constructed statistics, however, must be put in their proper context.

Indeed, graduation percentages are straightforward. The factors that produce changes to them are not. Researchers acknowledge that empirical studies of dropout and graduation rates are costly, time consuming, methodologically challenging, and therefore rare. Christopher Swanson, the vice president of Editorial Projects in Education, rightly pointed out that it is “hard to put a stamp on any particular explanation [of rising graduation rates].” But evidence suggests that the decline of academic standards may play a significant role.

The widespread acceptance of social promotion and “no fail” grading policies have produced generations of public school students that simply *expect* to graduate regardless of merit. Many public schools are all too willing to oblige. The underlying problem is that many of our schools pair low expectations with weak academic standards. It is a disastrous combination.

The process begins early in students' academic career. In *Do Schools Challenge Our Students?* (2012), researchers at the Center for American Progress, found that grade-level math and English instruction fails to challenge the vast majority of elementary and middle school students. Approximately 86 percent of a sample of the nation's fourth-graders reported that their math work is sometimes, often, or always too easy. Eighty-three percent of the nation's eighth-graders agreed. Over half of the eighth-grade sample reported that they read ten or fewer pages in school and for homework every day.

Years of low expectations and lax standards take their toll by the time students reach high school. The authors of *The Condition of College & Career Readiness 2012* closely examined the English, reading, mathematics, and science performance of the ACT-tested graduating class of 2012. Only 25 percent of mostly college-bound students met benchmarks in all four subjects. Almost an identical percentage met none of them. Overall, 60 percent of students met benchmarks on only two of the four areas. They concluded that a majority of high school graduates are at risk of not succeeding in college and in the workforce.

Once high school graduates move on, are they succeeding? In 2011, the College Board asked recent high school graduates to evaluate their academic preparation for life after high school. In the report that followed, *One Year Out*, researchers reported that nearly seven out of ten students said that graduating from high school was easy. Only about half of the respondents believed that their high school did a good job of preparing them for life after high school.

The College Board also reported that two- and four-year colleges required 24 percent of those surveyed to take one or more remedial courses. Individual state results are even more telling. In 2007, the North Carolina Community College System required just over half of prior year graduates to enroll in a remedial English, reading, or math course. By 2011, that percentage increased to a staggering 65 percent.

For many, rising graduation rates suggest that our public schools are improving. But quantity is not the same as quality. Graduation rates are worthless if public schools fail to provide high school graduates knowledge and skills that allow them to be successful in any postgraduate endeavor they choose.



TERRY L. STOOPS, Ph.D. is the Director of Research and Education Policy Studies at the John Locke Foundation. He has been a private sector member of ALEC's Education Task Force since 2008.



School Choice: Coming to a State Near You

BY WHITNEY RHOADES

The 2011 and 2012 state legislative sessions have resulted in stunning victories for the enactment of new publicly-funded private school choice programs across the country. Prior to 2011, 20 private school choice programs existed in 12 states and the District of Columbia. Today, there are 32 programs in 16 states, the District of Columbia, and Douglas County, Colorado—an astounding one-third of current programs were enacted during the past two years. During this time period, 19 states successfully passed choice legislation out of at least one legislative chamber. Only a handful of state legislatures did not introduce any private school choice bills during the last two sessions. Nationwide, momentum behind the powerful idea of providing children and their parents with more educational options is growing as parents, education reformers, and state and local elected officials recognize that parental choice makes sense for families in their states.

Choice empowers parents to decide what educational delivery system—be it traditional public school, charter school, or private school—best meets the specific needs of their child. And programs all across the country show that choice improves educational outcomes for participating students, often puts children

in safer schools, and gives parents more satisfaction with their child's learning environments. Private school choice supporters believe that children—regardless of their ZIP code—should have the opportunity to go to better schools through access to private schools via opportunity scholarships (also known as vouchers), scholarship tax credit programs, and education savings accounts. Under voucher programs, education dollars “follow the child,” and parents select private schools and receive state-funded scholarships to pay tuition. Another method, scholarship tax credit programs allow companies and individuals to receive tax credits for donating to nonprofit organizations that provide scholarships to children to attend the private school of their parents' choice. The third and newest mechanism for providing families with enhanced educational options is education savings account programs. These programs create personal accounts that store a child's state education dollars for use in a variety of educational options, including tuition and fees, textbooks, and tutoring. Arizona, home to the nation's first education savings account program, enacted the program in 2011 and already significantly expanded student eligibility for participation in the program this year.

Heading into the 2012-13 school year, more than one million children are currently eligible to participate in one of the 32 school choice programs across the country. Visionary governors and

STATES *with* SCHOOL CHOICE PROGRAMS



unprecedented legislative successes have provided the opportunity for an increasing number of parents to decide the best educational setting for their child. Today, Indiana is in the second year of implementing a statewide voucher program aimed at giving educational choices to low- and working-class families across the state. The number of participating students will only continue to grow, as the enrollment cap is completely lifted during the program's third year. Likewise, this past spring, Louisiana passed a sweeping statewide expansion of the existing New Orleans voucher program. Now, as many as 380,000 Louisiana children are eligible to participate in the expanded program statewide.

The evidence that school choice results in better outcomes for students continues to mount. For instance, a major finding of the last federal Institute of Educational Sciences report was that students in Washington, D.C. who used their opportunity scholarships had a 91 percent graduation rate—21 percentage points higher than those interested in the program who did not receive a scholarship. A state-sanctioned study of the Florida Tax Credit Scholarship program found that the competition the program presented to public schools led to standardized test score gains in the public schools most likely to lose students to private schools. Additionally, the most recent evaluations of the Milwaukee Parental Choice

Program build on prior findings of higher on-time high school graduation rates for voucher students to also determine that students participating in the program were more likely to enroll in a four-year college and persist in college than their Milwaukee Public School peers. Private schools participating in school choice programs serve students of all stripes. Eligibility is most often targeted to students from low- and middle-income families. Of the 32 existing programs, 11 are specifically designed to assist children with special needs. The majority of students participating in both Indiana and Louisiana's new statewide voucher programs are minority students. And the Florida Tax Credit Scholarship has long been serving those most in need—the typical participating student has an average household income of just over \$24,000 for a family of four, the majority of whom are black or Hispanic.

Is it time to bring school choice to your state?



WHITNEY RHOADES serves as Policy Director at the American Federation for Children, a leading national advocacy organization promoting school choice.

Healthcare Freedom Act: More Important than Ever

BY CLINT BOLICK

Originally published as a Policy Brief on August 16, 2012

Following the U.S. Supreme Court's decision in *NFIB v. Sebelius*, the adoption and deployment of the *Health Care Freedom Act* will be a vitally important tool in protecting individual autonomy.

The first state to adopt a *Health Care Freedom Act* was Arizona, whose voters approved it as an amendment to their Constitution in 2010. Different versions contain varying language, but the core provision is the same: no governmental entity shall coerce, directly or indirectly, any individual to participate in a healthcare system, nor interfere with an individual's freedom to directly purchase lawful medical services.

Obviously, the federal healthcare law violates the *Health Care Freedom Act* in two ways: by directly mandating that individuals purchase prescribed health insurance, and by indirectly coercing them to do so by imposing tax penalties for refusing to follow the government's edict.

The *Health Care Freedom Act* was not directly at issue in *NFIB v. Sebelius*, but a clash between this state constitutional protection and the federal healthcare law is inevitable.

The Supreme Court ruled that the federal healthcare law's financial penalty on an individual's refusal to participate in a prescribed health insurance system was within Congress' constitutional taxing authority. The Court did not decide whether such a tax could override a state's authority under the Ninth and Tenth Amendments to exercise sovereignty over a traditional area of state regulation or to protect the healthcare autonomy of their citizens. That issue is presented in the Goldwater Institute's lawsuit, *Coons v. Geithner*, which is pending in federal district court in Phoenix.

The *Health Care Freedom Act* may be even more salient on another front: preventing the restriction of individual autonomy through state healthcare exchanges. A majority of the Supreme Court ruled that Congress does not have constitutional authority to directly compel individuals to purchase prescribed health insurance (the "individual mandate"). However, Chief Justice John Roberts observed that the federal government can influence state policy through financial incentives. "These offers," Roberts explained, "may well induce the States to adopt policies that the Federal Government itself could not impose."

In addition to its taxing power, the obvious mechanism through which the federal government can bring about an individual mandate is state health insurance exchanges. The federal law provides that either states may set up health insurance exchanges, or the federal government will create exchanges where states decline to

do so. Many states have accepted federal funds and are in the process of establishing state healthcare exchanges. When they do so, the Secretary of Health and Human Services retains authority to regulate the state exchanges. Through that power, or by the states' own regulations, the exchanges may well directly or indirectly compel individuals to participate in prescribed healthcare systems, impose penalties for their failure to do so, and/or limit the ability of individuals to directly purchase lawful medical services.

Moreover, some states, such as Massachusetts, are moving on their own initiative to coerce participation in government health insurance schemes or in specified private systems.

The *Health Care Freedom Act* creates a constitutional barrier against efforts by states to limit healthcare choices—whether acting on their own accord or as minions of the federal government. Citizens can effectively protect their autonomy by enacting and enforcing their rights under the *Health Care Freedom Act*.

Fortunately, the *Health Care Freedom Act* was drafted broadly to prohibit constraints on healthcare freedom imposed at any level of government. Though the U.S. Supreme Court has blunted somewhat the federal government's efforts to directly impose an individual mandate, efforts to impose a one-size-fits-all insurance regime will no doubt continue. The *Health Care Freedom Act* provides the best possible protection for our precious individual rights. Freedom advocates should continue to work in the states to establish this important constitutional protection, and to vigorously enforce it through legal action when the individual rights it protects are threatened.

In sum, we recommend the following:

- **Activists and policymakers in states that do not have a *Health Care Freedom Act* should work to have them added to their state constitutions.**
- **Activists in states that have a *Health Care Freedom Act* in their state constitutions should carefully monitor state actions regulating healthcare and challenge any that violate rights protected by the Act.**
- **Activists and policymakers should oppose the creation of state healthcare exchanges.**

CLINT BOLICK serves as the Goldwater Institute's Vice President for Litigation

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